

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.266 of 2015

IN

LPA No. 1201 of 1996

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Durga Mishir Das, Chela Late Raghunath Das, resident of Village- Birakh, P.S.-
Sursand, District- Sitamarhi.

.... Petitioner/s

Versus

1. Mahanth Ram Kishore Das Chela of Late Mahant Nand Kishore Das, Resident
of Village- Birakh, P.S.- Sursand, District- Sitamarhi.
2. The State of Bihar.
3. Commissioner, Tirhut Division, Muzaffarpur.
4. Additional Collector, Sitamarhi.
5. Deputy Collector, Land Reforms, Sitamarhi, East, District- Sitamarhi.
6. Anchal Adhikari Sursand, District- Sitamarhi.
7. Ram Umesh Singh,
8. Bhawan Singh,
9. Tuntun Singh,
10. Mukesh Singh, all are sons of Nathuni Singh, Resident of Village- Birakh, P.S.-
Sursand, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate
For O.P. No. 1 : Mr. Drona Charya, Advocate
For the State : Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 23-08-2016

This review application has been filed for
reviewing and recalling the order dated 28.04.2015, passed in L.P.A.
No. 1201 of 1996 which arose out of the judgment and order dated
20.09.1996, passed in C.W.J.C. No. 612 of 1986. The writ petition
was allowed and the letters patent appeal was filed by respondent no.
10 to the writ petition. By the order under review dated 28.04.2015



the letters patent appeal has been allowed noticing that the notices were issued in the appeal to respondent no. 10 who was the writ petitioner and it has been duly served and acknowledgement received, but he has chosen not to appear. Accordingly, in absence of the writ petitioner, letters patent appeal was heard and the order passed in the writ petition was set aside.

Learned counsel for the review petitioner seeks procedural review, inasmuch as, he submits that no notice was at all issued to respondent no. 10 in the appeal, who was the writ petitioner. For the said purpose, we have examined the records of the letters patent appeal, from which it transpires that originally in the letters patent appeal, orders were issued for issuance of notice to the respondents. Upon non-filing of notice the appeal stood dismissed. It was restored wherein it was stated that up to respondent no. 5 they are government officials and the State accepted notice. For the rest notice had to be issued. Curious to note that at that stage the appellant submitted to the Court that respondent no. 10, who was the writ petitioner, had died without any heir and, as such, sought deletion of his name from the array of respondents to the appeal. Court allowed the prayer. Subsequently, the appellant informed the Court that it would be necessary to issue notice to respondent no. 10 to the appeal, who was the writ petitioner. He, accordingly, filed application for

adding heirs of respondent no. 10. The Court ordered that the notice be issued by registered post with acknowledgement due, but further ordered that the appellant would take notice. The office note is clear that the appellant was asked by the office to take notice for onward transmission to the heirs of respondent no. 10 but the appellant refused, as such, from the record, it is clear that no notice was at all issued to the heirs of respondent no. 10. That being so, the order allowing the letters patent appeal was passed on misapprehension of fact that respondent no. 10 had been noticed and had chosen not to appear. We are, therefore, constrained to recall the order dated 28.04.2015, passed in L.P.A. No. 1201 of 1996 and restore the appeal for hearing. No notice need be issued to any party as all contesting parties have appeared and the order has been passed in their presence.

This review application is, accordingly, allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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